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OFFICE OF PETITIONS

In re Application of	:	
Huynh-Ba et al.	:	
Application No. 10/622,435	:	DECISION ON PETITION
Filed: July 18, 2003	:	
Attorney Docket No. DCS-9179	:	

This is a decision on the petition under 37 CFR 1.181, filed April 7, 2006, to withdraw the holding of abandonment for the above-identified application.

On September 20, 2005, the Office mailed a final Office action, which set a three-month shortened statutory period for reply. On November 17, 2005, applicants filed an amendment in response to the final Office action. On January 5, 2006, the examiner mailed an Advisory Action, stating that the amendment failed to place the application in condition for allowance. On March 21, 2006 (certificate of mailing dated March 17, 2006), applicants filed a Request for Continued Examination (RCE).

On March 23, 2006, the Office mailed a Notice of Abandonment, which stated that the above-identified application was abandoned in view of applicants' failure to file a proper reply to the final Office action mailed on September 20, 2005. The Notice further stated that the Office received a proposed reply on November 17, 2005, but that it did not constitute a proper reply under 37 CFR 1.113(a) to the final rejection. Lastly, the Notice indicated that a proper reply

under 37 CFR 1.113 to a final rejection consisted only of: (1) a timely filed amendment, which placed the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee), or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114). On April 7, 2006, applicants filed the present petition, a copy of the RCE and a copy of the Fee Transmittal for FY 2003.

In the present petition, applicants averred that the application was not abandoned and requested that the Office withdraw the holding of abandonment. Specifically, applicants stated that they filed a timely response in the form of an RCE on March 21, 2006 (certificate of mailing dated March 17, 2006). Additionally, applicants asserted that the Fee Transmittal for FY 2003 contained a general authorization to charge any necessary fees to the Deposit Account, and therefore, the Office could have charged applicants' Deposit account for a three-month extension of time to respond to the final Office Action of September 20, 2005.

Applicants' assertions are well taken. 37 CFR 1.136(a)(3)(B) provides that: "an authorization to charge all required fees, fees under 37 CFR 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under 37 CFR 1.136(a) to be timely."

The record reveals that applicants filed a general authorization to charge all fees required. Therefore, the Office should have charged applicants' Deposit Account for an extension of time for response within the third month so that the RCE would be filed timely.

Accordingly, the petition is **granted**. The Notice of Abandonment was mailed in error and is hereby withdrawn. The application is restored to pending status in view of the fact that a response was timely filed and received on March 21, 2006 (certificate of mailing dated March 17, 2006).

The Office will charge the \$1,020.00 extension of time fee for filing a response within the third month to applicants' Deposit Account as authorized.

The matter is being referred to the Technology Center Art Unit 1743.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

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